

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 00-18
FM Broadcast Stations.)	RM9790
(Barnwell, South Carolina, and Pembroke,)	
Douglas, Willacooche, Statesboro,)	
Pulaski, East Dublin, Swainsboro and)	
Twin City, Georgia))	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: July 24, 2003

Released: July 25, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Reconsideration filed by Bullie Broadcasting Corporation (“Bullie Broadcasting”) directed to the *Memorandum Opinion and Order* this proceeding.¹ Multi-Service Corporation (“Multi-Service”) filed an Opposition to Petition for Reconsideration and a Supplement. Bullie Broadcasting filed a Reply to Opposition. For the reasons discussed below, we deny the Petition for Reconsideration.

Background

2. At the request of Bullie Broadcasting, licensee of Station WBAW, Channel 256C3, Barnwell, South Carolina, the *Report and Order* substituted Channel 257C1 for Channel 256C3 at Barnwell, reallocated Channel 257C1 to Pembroke, Georgia, and modified the Station WBAW license to specify operation on Channel 257C1 at Pembroke. In order to provide for a continuation of FM service at Barnwell, the *Report and Order* allotted Channel 256C3 to Barnwell as a “backfill” allotment at new coordinates. In doing so, the *Report and Order* dismissed a Counterproposal filed by Multi-Service, licensee of Station WPMX, Channel 275C3, Statesboro, Georgia. In that Counterproposal, Multi-Service proposed several new and modified allotments including the substitution of Channel 257C3 for Channel 275C3 at Statesboro and modification of its license to specify operation on Channel 257C3. It also proposed the reallocation of Channel 258C1 from Douglas to Willacooche, Georgia, and modification of the Station WDMG license to specify operation on Channel 258C1 at Willacooche. The Multi-Service Counterproposal was dismissed for two reasons. First, unlike Bullie Broadcasting, Multi-Service did not agree to reimburse Jumbo Thing, Inc., licensee of Station WDMG, for the costs of changing its community of license and relocation of the Station WDMG transmitter. Second, the Multi-Service Counterproposal also included a proposal for a Channel 251A allotment at Twin City, Georgia. This proposed allotment was untimely with respect to a conflicting Counterproposal filed by Lacom Communications in MM Docket 99-259. Multi-Service sought reconsideration of the *Report and Order*.

¹ *Barnwell, South Carolina, et al.*, 17 FCC Rcd 18956 (MB 2002).

3. In its Petition for Reconsideration, Multi-Service noted that on April 12, 2001, the license for AM Station WBUB, Barnwell, South Carolina, was cancelled. As a result, Multi-Service contended that our action in the *Report and Order* removed the sole local service from Barnwell, South Carolina, and was contrary to Commission policy and prior actions.² In the *Memorandum Opinion and Order*, we granted the Petition for Reconsideration to the extent of withholding program test authority for the Channel 257C1 reallocation to Pembroke, South Carolina, until the ultimate permittee of the Channel 256C3 allotment at Barnwell, South Carolina, commences operation. We also stated that we would not issue any special temporary authority to permit operation on Channel 257C1 at Pembroke, South Carolina, prior to commencement of operation on Channel 256C3 at Barnwell. This condition is intended to ensure the continuation of local service at Barnwell, and the initiation of a first local service at Pembroke. This action was consistent with previous actions involving the allotment of a “backfill” channel replacing the reallocation of a sole local service.³

4. In its Petition for Reconsideration, Bullie Broadcasting argues that we imposed a “novel and extraordinary” condition on the grant of its reallocation to Pembroke by “preemptively foreclosing any possibility” of permitting Station WBAW to operate at Pembroke pursuant to a special temporary authority. It claims that this condition on the Pembroke reallocation was outside our authority. Bullie Broadcasting also contends that Multi-Service did not have standing to request the relief ultimately afforded it in the earlier *Memorandum Opinion and Order*. Specifically, Bullie Broadcasting argues that Multi-Service could only seek reconsideration of the dismissal of its Counterproposal. We will discuss each of these arguments.

5. The Commission has recently addressed the matter of a station seeking a special temporary authority to operate facilities at a new community of license when the effect would be to withdraw a sole local service from the former community of license.⁴ In *Refugio, Texas*, we had granted a proposal to substitute Channel 293C2 for Channel 291C3 at Refugio, Texas, reallocate Channel 293C2 to Taft, Texas, and modify the Station KTKY license to specify operation on Channel 293C2 at Taft.⁵ That action removed the sole local service from Refugio. For that reason, we also allocated Channel 291A to Refugio as a “backfill” and specifically conditioned program test authority for a Channel 293C2 operation at Taft on the commencement of service by the “backfill” allotment at Refugio. In *Pacific Broadcasting of Missouri*, the Commission denied a request filed by the licensee of Station KTKY for a special temporary authority to operate at Taft in violation of this condition.⁶

6. Our action in the instant proceeding is not intended to “preemptively” foreclose the possibility of a special temporary authority as argued by Bullie Broadcasting. Instead, we merely announced that we would not routinely grant a special temporary authority to operate facilities at Pembroke. This statement is intended to preclude a licensee from circumventing the condition of withholding program test authority until the “backfill” channel commences operation. This is consistent with prior staff actions and the Commission decision in *Pacific Broadcasting of Missouri*. In *Pacific Broadcasting of Missouri*, the Commission reiterated the importance of a community continuing to have local service. The denial of the request for special temporary authority was based upon the fact that the licensee failed to demonstrate

² See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). See also *Ardmore, Oklahoma*, and *Sherman, Texas*, 6 FCC Rcd 7006 (MM Bur. 1991).

³ See e.g. *Refugio and Taft, Texas* (“*Refugio, Texas*”), 15 FCC Rcd 8497 (MM Bur. 1997); *Llano and Marble Falls, Texas*, 12 FCC Rcd 6809 (MM Bur. 1997).

⁴ *Pacific Broadcasting of Missouri LLC*, 18 FCC Rcd 2291 (2003), *recon. pending*.

⁵ *Refugio, Texas*, 15 FCC Rcd at 8500.

⁶ *Pacific Broadcasting of Missouri LLC*, 18 FCC Rcd at 2295.

that it had exhausted all possibilities of providing a temporary operation in Refugio. Any request by Bullie Broadcasting for a special temporary authority will be processed in accordance with the principles set forth in *Pacific Broadcasting of Missouri*.

7. We also disagree with the Bullie Broadcasting argument that Multi-Service could only seek reconsideration of the action dismissing its Counterproposal and that there was no basis for us to impose a condition on the Pembroke reallocation. In the earlier Petition for Reconsideration in this proceeding, Multi-Service correctly noted that our action reallocating Channel 257C1 from Barnwell to Pembroke removed the sole local service from Barnwell. For this reason, Multi-Service requested that we reconsider this action and deny the Bullie Broadcasting reallocation. This relief would have removed an impediment to Multi-Service's proposed channel substitution at Statesboro. Contrary to the suggestion by Bullie Broadcasting, this impediment directly resulted from the *Report and Order* and afforded Multi-Service standing to seek reconsideration.⁷

8. In its Supplement to Opposition, Multi-Service refers to the Commission decision in *Pacific Broadcasting of Missouri*. In addition to denying a request for special temporary authority, the Commission determined that the "backfill" practice was uncertain, time-consuming and a potential cause of intractable spectrum entanglements. For this reason, the Commission directed the staff to cease this practice. In view of the fact that the reallocation to Pembroke is not final, Multi-Service contends that this Commission directive requires that we reverse our action reallocating Channel 257C1 to Pembroke. We disagree. The Commission action in *Pacific Broadcasting of Missouri* only instructed the staff to cease the "backfill" practice on a going-forward basis. Under this policy, the staff will not grant any currently pending rulemaking petition that requires a vacant allotment "backfill" to preserve local service. The Commission, however, did not instruct the staff to set aside prior actions. This going-forward approach best accommodates the needs of the listeners and the need of licensees for an orderly administrative process.

9. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Bullie Broadcasting Corporation IS DENIED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

⁷ Cf. *California Association of the Physically Handicapped, Inc. v. FCC*, 778 F. 2d 823 (D.C. Cir. 1985) (association representing handicapped persons did not have a redressable injury or standing to object to an application to assign less than 50% of a licensee corporation because the alleged failure of the station to serve the handicapped was not traceable to the assignment application).